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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

**REPLY COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") respectfully submits its reply comments regarding the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹ The record in this proceeding supports PCIA's conclusions that: (1) universal service funding mechanisms must be consolidated and made explicit; (2) universal service disbursements must be narrowly targeted in a technologically neutral fashion; (3) contributions to the universal service fund should be adjusted according to equitable factors; and (4) Commercial Mobile Radio Service ("CMRS") providers should be required to contribute only to the interstate universal service fund, if at all.

¹ FCC 96-93 (Mar. 8, 1996) ("*Notice*"). By Order of the Commission, DA 96-463 (Apr. 1, 1996), the deadline for filing reply comments in this proceeding was extended until May 7, 1996.

I. INTRODUCTION AND SUMMARY

In this proceeding, the Commission seeks comment on proposals for implementing Section 254 of the Communications Act of 1934, as added by the Telecommunications Act of 1996.² The opening round of this proceeding witnessed a vast number of parties from all segments of the telecommunications industry -- and related fields including local exchange carriers, interexchange carriers, CMRS providers, information service providers, state regulators, health care providers, educational institutions, and public interest groups -- offering their comments on the Commission's proposals.

In its opening comments, PCIA focused on how contributions to the universal service fund should be assessed, and how these funds should be disbursed. Specifically, PCIA made the following points. *First*, any method of assessing contribution obligations must be non-discriminatory and equitable in light of the economic realities governing each class or category of service. *Second*, because CMRS is an inherently interstate service, Section 332(c) of the Communications Act mandates that CMRS providers contribute only to the federal universal service fund, if at all. *Third*, universal service funding mechanisms should be explicit, and all implicit funding mechanisms should be discontinued. *Finally*, disbursements from the universal service fund should be narrowly targeted in a technologically neutral manner.

² Telecommunications Act of 1996, Pub. L. No. 104-104, § 101(a), 110 Stat. 56 (1996) (*to be codified at* 47 U.S.C. § 254). Future references will be to the statutory sections as they will be codified.

II. UNIVERSAL SERVICE FUNDING MECHANISMS SHOULD BE CONSOLIDATED AND EXPLICIT, AND DISBURSEMENTS SHOULD BE NARROWLY TARGETED, COST EFFECTIVE AND TECHNOLOGICALLY NEUTRAL

Section 254(d) states that all carriers providing interstate services "shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service." As PCIA stated in its opening comments, the Commission should implement this statutory mandate by unifying the now splintered mechanisms that fund universal service and ensuring that disbursements are narrowly targeted, limited, and technologically neutral.

At present, universal service is funded by a mixture of sources that includes the carrier common line ("CCL") charge assessed on long distance carriers and passed on to long distance customers. As pointed out by the Commission, these sources of funding are discriminatory because long distance subscribers fund universal service on a per-minute basis while local subscribers contribute on a flat rate basis.³ Funding comes from other sources as well, such as the dialed equipment minute weighting assistance program.⁴ As a result, at present, end users and telecommunications

³ See Notice, ¶ 113.

⁴ See *id.*, ¶¶ 27-30.

providers contribute to universal service support in a number of direct and indirect ways.⁵

PCIA urges that this splintered and discriminatory funding mechanism be unified, made explicit, and applied fairly to all carriers.⁶ One acceptable method of achieving these goals is to assess a flat, monthly universal service fee on end users. Such a fee could be placed on the subscriber bill as a discrete line item in order to inform each member of the public how much they are contributing to the universal service fund. Even if this approach is not adopted, however, the Commission should deploy a consolidated, explicit mechanism to fund universal service.

As well as reforming the manner in which universal service is funded, PCIA urges the Commission to promulgate rules that tightly control the manner in which these funds are expended, and ensure that they are expended in the most cost effective, technologically neutral manner possible. As mandated by Section 254(k), expenditures can be controlled in part by adopting rules that preclude the cross subsidization of competitive services with universal service funds.

⁵ See, e.g., Comments of Vanguard Cellular Systems, Inc., CC Dkt. No. 96-45, at 4 (filed Apr. 12, 1996) ("Vanguard").

⁶ See also Comments of AirTouch Communications, Inc., CC Dkt. No. 96-45, at 10-11 (filed Apr. 12, 1996) ("AirTouch"); Comments of the Competitive Telecommunications Association, CC Dkt. No. 96-45, at 8 (filed Apr. 12, 1996); Comments of Pacific Telesis Group, CC Docket No. 96-45, at 12-13 (filed Apr. 12, 1996).

The goal of cost effectiveness also can be achieved through the implementation of technologically neutral market mechanisms to disburse universal service funds.⁷ Market mechanisms identified in the record include the use of customer vouchers that can be redeemed with any carrier eligible to provide universal service, credit guarantees for low income customers, and the use of competitive bidding to set the subsidy level for rural and high cost areas. Finally, allowing universal service funds to flow to wireless carriers such as CMRS providers, where appropriate, will ensure that the most cost effective technology can be utilized to provide service to each area.⁸

III. CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND SHOULD BE ADJUSTED ACCORDING TO EQUITABLE FACTORS

In its *Notice*, the Commission requested comment on: (1) which providers of telecommunications services might be treated differently from others for "equitable" reasons;⁹ and (2) measures to avoid significant economic harm to small business entities.¹⁰ In its opening comments, PCIA noted that the types of services provided by the messaging industry and the economic circumstances surrounding this marketplace are factors the Commission may consider in determining USF contribution levels for the messaging industry.

⁷ See also *AirTouch* at 10.

⁸ See also *Vanguard* at 7-9.

⁹ *Notice*, ¶ 10.

¹⁰ *Id.*, ¶ 120.

Preliminarily, many paging carriers offer low profit margin services and operate in a highly competitive market. Thus, a small increase in overhead costs could do significant economic harm to individual members of the messaging industry as well as to the thriving competition in this market. In addition, messaging is already the least expensive form of communications. By raising the cost of messaging through increased universal service fees, the Commission might price this service out of the reach of some customers.

Finally, because paging providers do not provide real-time, interactive, two-way voice communications, they will probably not be eligible to receive universal service funds under Section 214(e). Given such ineligibility for universal service funding as well as the factors enumerated above, a reduction in, or elimination of, the contribution requirements for the messaging industry would be equitable within the meaning of Section 254.

IV. UNDER SECTION 332(C), CMRS PROVIDERS SHOULD NOT BE REQUIRED TO CONTRIBUTE TO STATE UNIVERSAL SERVICE FUNDS

In its opening comments, PCIA noted that, because CMRS is both legally and factually an interstate service, CMRS providers should be required to contribute only to the federal universal service fund. In these reply comments, PCIA elaborates on this argument based on the plain language and legislative history of Section 332(c) of the Communications Act. PCIA concludes that, because CMRS providers do not provide local exchange service for a "substantial portion" of any state's communications,

CMRS providers should not be required to contribute to state universal service funds.¹¹

The plain language of Section 332(c)(3)(A) indicates that states cannot require CMRS providers to contribute to their intrastate universal service funds unless CMRS is used as a substitute for landline local exchange service for a "substantial portion" of the state's communications. Both the legislative history of Section 332(c) and the dictionary definition of "substantial portion" clarify that this term means a large percentage.

Section 332(c)(3)(A) addresses federal preemption of state regulation of rates, market entry, and universal service obligations for CMRS providers. Under this section, states are generally prohibited from regulating the "entry of or the rates charged by" any CMRS provider, unless "market conditions . . . fail to protect subscribers" from "unjust" or "unreasonably discriminatory" rates or such unjust or unreasonably discriminatory "market conditions exist" and CMRS serves as "a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State."¹² Regarding universal service, Section 332(c)(3)(A) subjects CMRS providers to state universal service

¹¹ *See also* AirTouch at 3-5; Comments of Reed Smith Shaw & McClay, CC Dkt. N. 96-45, at 3-8 (filed Apr. 12, 1996).

¹² 47 U.S.C. § 332(c)(3)(A)(ii).

requirements only "where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State."¹³

There is no legislative history to cast light on the universal service portion of Section 332(c)(3)(A) -- that is, the meaning of "a substitute for land line telephone exchange service for a substantial portion of the communications within such State." However, the Conference Report does lend further meaning to the analogous phrase, "a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State" found in the entry and rate regulation provision of the statute. According to this Report, "if subscribers *have no alternative means of obtaining basic telephone service*,"¹⁴ other than CMRS, then states are permitted to regulate the rates charged for CMRS.¹⁵

Thus, the definition of "substantial portion" derived from the legislative history implies that this term refers to a very high percentage of a state's communications. If the legislative history is to be taken at face value, then only CMRS providers that have local service monopolies can be required to contribute to state universal service funds, and the meaning of "substantial portion" approaches 100 percent. At present, no

¹³ 47 U.S.C. § 332(c)(3)(A).

¹⁴ H.R. Rep. No. 213, 103rd Cong., 1st Sess. 493 (1993) ("Conference Report") (emphasis added).

¹⁵ See also *Petition of Arizona Corporation Commission*, 10 FCC Rcd 7824, 7838-39 (1995) (holding that states can regulate CMRS rates only after presenting "evidence that identifies . . . the number of individuals in that state for whom CMRS is the only available telephone exchange service").

CMRS providers have such monopolies, nor can they be expected to achieve such roles at any time in the foreseeable future.

Thus, CMRS providers should be required to pay in to only the interstate universal service fund, if at all. In the event the Commission concludes otherwise, however, steps must be taken to ensure that CMRS licensees are not required to "double pay" into interstate and intrastate funds.¹⁶


¹⁶ *See also Vanguard* at 5-7.

V. CONCLUSION

PCIA endorses the Commission's mandate to implement an equitable and non-discriminatory universal service regime. The Commission should take all steps necessary to limit the size of the fund and to target carefully the distributions on a technologically neutral basis. Funding requirements must be explicit and should take into account relevant equitable factors applicable to particular classes of telecommunications providers. By taking these steps, the Commission can effectively balance its universal service and competitive marketplace mandates.

Respectfully submitted,

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May 7, 1996

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